

BEFORE THE DEPARTMENT OF  
NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

\* \* \* \* \*

IN THE MATTER OF APPLICATION FOR )  
BENEFICIAL WATER USE PERMIT NO. ) FINAL ORDER  
26,290-s41E BY JEANNIE S. MINING CORP. )  
\* \* \* \* \*

The Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order as entered by the Hearing Examiner on November 21, 1980, are hereby adopted as the Findings of Fact, Conclusions of Law and Final Order.

FINAL ORDER

1. Subject to the conditions and limitations listed below, Application for Beneficial Water Use Permit No. 26,290-s41E by Jeannie S. Mining Corporation is hereby granted to appropriate up to 94 acre-feet per annum from an unnamed tributary of the Little Boulder River. The water is to be diverted by means of a dam in the SW1/4 NE1/4 NE1/4 of Section 8, Township 5 North, Range 4 West, Jefferson County, Montana. The water is to be diverted for storage from April 15 to June 15, inclusive, of each year. The water is to be used for mining purposes in the SE1/4 of Section 5 and the NE1/4 of Section 8, Township 5 North, Range 4 West, Jefferson County, Montana. The proposed on-stream storage reservoir shall have a capacity of 94 acre-feet. The period of storage in the reservoir is to be January 1 to December 31, inclusive, of each year.

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2. Provisional Permit No. 26,290-s41E is granted subject to existing rights in the source of supply and any final determination of those rights as provided by Montana Law.

3. The proposed reservoir shall be constructed with an adequate spillway for safety and a control structure to pass water, if necessary, to satisfy prior downstream rights.

4. The issuance of the Provisional Permit by the Department in no way reduces the Permittee's liability for damages caused by the Permittee's exercise of this Provisional Permit, nor does the Department in issuing the Provisional Permit in any way acknowledge liability for damage caused by the Permittee's exercise of this Provisional Permit.

NOTICE

The Hearing Examiner's Final Order may be appealed in accordance with the Montana Administrative Procedures Act by filing a petition in the appropriate court within thirty (30) days after service of the Final Order.

DATED this 5th day of December 1980.

David L. Pengelly

DAVID L. PENGELLY, D.N.R.&C.  
HEARING EXAMINER

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SUMMARY OF RECORD

1. On February 1, 1980, the Department received Application for Beneficial Water Use Permit No. 26,290-s41E by Jeannie S. Mining Corporation to appropriate up to 94 acre-feet per annum to be diverted from storage at a point in the SW1/4 NE1/4 NE1/4 of Section 8, Township 5 North, Range 4 West, Jefferson County, from April 15 to June 15, inclusive, of each year. The water is to be used for mining purposes in the SE1/4 of Section 5 and the NE1/4 of Section 8, Township 5 North, Range 4 West, Jefferson County, Montana. The water is to be diverted by means of an on-stream reservoir with a capacity of 94 acre-feet to be stored from January 1 to December 31, inclusive, of each year.

2. On April 17 and 24, and May 1, 1980, the Department caused to be duly published in the Independent Record, Helena, Montana, and in the Boulder Monitor, Boulder, Monitor, Notice of Application for Beneficial Water Use Permit No. 26,290-s41E.

3. On May 20, 1980, the Department received an objection to the above Application from Ranchotels of America.

4. On May 22, 1980, the Department received an objection to the above Application from the Montana Power Company.

5. On June 4, 1980, the Department received an objection to the above Application from Jean C. and Milton O. Gilmer.

6. The Department received an objection to the above Application from the Time Zone Corporation which was dated June 2, 1980.

7. The hearing, originally scheduled for October 28, 1980 was rescheduled for November 6, 1980 at the request of counsel for the Applicant.

8. On November 5, 1980, Jean C. and Milton O. Gilmer withdrew their objection to the above Application and the Time Zone Corporation withdrew its objection to the above Application subject to the Application being granted with a condition to protect prior rights.

#### PROPOSED FINDINGS OF FACT

Based on the information contained in the Department's file in this matter, it is found:

1. That the Applicant intends to divert up to 94 acre-feet per annum from an unnamed tributary of the Little Boulder River in the SW1/4 NE1/4 NE1/4 of Section 8, Township 5 North, Range 4 West, Jefferson County, Montana.

2. That the anticipated annual runoff from the 525 acres in the drainage basin above the reservoir is 245 acre-feet.

3. That the water is to be diverted from storage between April 15 and June 15, inclusive, of each year.

4. That the water from the reservoir will be used to wash gravel and will be recycled back into the reservoir for re-use.

5. That the water will be used in the SE1/4 of Section 5 and the NE1/4 of Section 8, both in Township 5 North, Range 4 West, Jefferson County, Montana.

PROPOSED CONCLUSIONS OF LAW

1. Section 85-2-311 states that "The department shall issue a permit if:

1. There are unappropriated waters in the source of supply:

a. at times when the water can be put to the use proposed by the applicant;

b. in the amount the applicant seeks to appropriate; and

c. throughout the period during which the applicant seeks to appropriate; the amount requested is available;

2. the rights of a prior appropriator will not be adversely affected;

3. the proposed means of diversion or construction are adequate;
4. the proposed use of water is a beneficial use;
5. the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved;  
..."

2. It is concluded that there are unappropriated waters in the source of supply at times when the water can be put to the use proposed by the Applicant; in the amount the Applicant seeks to appropriate; and throughout the period during which the Applicant seeks to appropriate, the amount requested is available.

3. It is concluded that the rights of prior appropriators will not be adversely affected by the granting of this permit.

4. It is concluded that the proposed means of diversion or construction are adequate.

5. It is concluded that the proposed use of water is a beneficial use.

6. It is concluded that the proposed use will not interfere unreasonably with other planned uses or



developments for which permits have been issued or for which water has been reserved.

7. Nothing decided herein has bearing on the status of water rights claimed by the Applicant other than those herein applied for, nor does anything decided herein have bearing on the status of claimed rights of any other party except in relation to those rights herein applied for, to the extent necessary to reach a conclusion herein.

Based on the Proposed Findings of Fact and Proposed Conclusions of Law, the following Proposed Order is hereby made:

PROPOSED ORDER

1. Subject to the conditions and limitations listed below, Application for Beneficial Water Use Permit No. 26,290-s41E by Jeannie S. Mining Corporation is hereby granted to appropriate up to 94 acre-feet per annum from an unnamed tributary of the Little Boulder River. The water is to be diverted by means of a dam in the SW1/4 NE1/4 NE1/4 of Section 8, Township 5 North, Range 4 West, Jefferson County, Montana. The water is to be diverted from storage from April 15 to June 15, inclusive, of each year. The water is to be used for mining purposes in the SE1/4 of Section 5 and the NE1/4 of Section 8, Township 5 North, Range 4 West, Jefferson County, Montana. The proposed on-stream storage reservoir

shall have a capacity of 94 acre-feet. The period of storage in the reservoir is to be January 1 to December 31, inclusive, of each year.

2. Provisional Permit No. 26,290-s41E is granted subject to existing rights in the source of supply and any final determination of those rights as provided by Montana Law.

3. The proposed reservoir shall be constructed with an adequate spillway for safety and a control structure to pass water, if necessary, to satisfy prior downstream rights.

4. The issuance of the Provisional Permit by the Department in no way reduces the Permittee's liability for damages caused by the Permittee's exercise of this Provisional Permit, nor does the Department in issuing the Provisional Permit in any way acknowledge liability for damage caused by the Permittee's exercise of this Provisional Permit.

NOTICE

This Proposed Order is offered for the review and comment of all parties of record. The review and comment period shall commence with the service of this Proposed Order and shall end ten (10) days thereafter. No extensions of time for comment will be granted.

The Final Order in this matter will be sent to all parties by certified mail.

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedures Act by filing a petition in the appropriate court within thirty (30) days after service of the Final Order.

DATED this 21st day of November, 1980.

David L. Pengelly  
DAVID L. PENGELLY, D.N.R. & C.  
HEARING EXAMINER

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